

AFTER RECORDING, RETURN TO:

Miller Nash Graham & Dunn LLP
 111 SW Fifth Avenue, Suite 3400
 Portland, OR 97204
 Attn: Jonathon L. Goodling

SECOND AMENDMENT OF GROUND LEASE AND SUBLEASE AGREEMENT

This Second Amendment of Ground Lease and Sublease Agreement ("**Amendment**") is effective as of the date upon which all Parties have signed this Amendment, by and among **SCHOOL DISTRICT NO. 1, MULTNOMAH COUNTY, OREGON**, an Oregon school district ("**PPS**"), the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon (the "**City**"), and **NATIVE AMERICAN YOUTH AND FAMILY CENTER**, an Oregon nonprofit corporation ("**NAYA**").

RECITALS

- A. PPS owns the property known as Foster Elementary School located at 5205 S.E. 86th Avenue in Portland, Oregon, and legally described on Exhibit A attached hereto, comprising approximately 3.57 acres (the "**Foster School Site**").
- B. The parties entered into a Ground Lease and Sublease Agreement dated April 24, 2013, as amended by a Lease Amendment No. 1, dated July 26, 2013 (collectively, the "**Lease**").
- C. Pursuant to the Lease the tract of land identified therein as the "Housing Tract" was leased to the City and simultaneously subleased to NAYA. The Lease also sets forth certain agreements of the parties with respect to the "School Tract" as defined therein.
- D. As contemplated by Section 1.2 of the Lease, the parties wish to change the boundaries of the Housing Tract and of the School Tract.
- E. The parties anticipate that the City will require certain land to be dedicated for roadway purposes as a condition of issuing building permits for the Project.
- F. The parties anticipate entering into a predevelopment agreement, which will address the cost of constructing the roadway and other development issues.
- G. The parties wish to set forth their agreement with respect to the above and certain other matters.

NOW, THEREFORE, the parties agree as follows:

- 1. **Boundaries of Housing Tract and School Tract.** Exhibit A-1 to the Lease is hereby deleted and replaced with the Exhibit A-1 attached to this Amendment. On and after the Effective Date, the "Housing Tract" as used in the Lease shall mean that area of land

identified on the attached Exhibit A-1 as "Phase I-Housing" and the School Tract shall be that area of land identified on the attached Exhibit A-1 as "Phase II-Early Learning Academy." The Housing Tract contains approximately 70,144 square feet and the School Tract contains approximately 56,674 square feet.

- 2. **Street Dedication.** To the extent required for development of the Project, PPS agrees to dedicate the land preliminarily identified on the attached Exhibit A-1 as "PPS Dedication" to the City of Portland for road purposes. The exact description of the land to be dedicated shall be determined pursuant to a survey acceptable to PPS. The cost of constructing the road will be shared by PPS and NAYA as set forth in the Pre-Development Agreement described on Exhibit B attached hereto. Additionally, the extent that PPS will receive credit from NAYA for the value of the land dedicated shall be set forth in such Pre-Development Agreement.
- 3. **Contingencies.** Exhibit B to the Lease is hereby deleted and the Exhibit B attached to this Amendment is hereby substituted in its place.
- 4. **No Other Changes.** Except as expressly set forth herein, the Lease shall remain unmodified and in full force and effect.

The parties have executed this Lease as of the day and year written above.

EXHIBITS A, A-1, AND B ARE HEREBY INCORPORATED AS PART OF THIS INSTRUMENT.

**SCHOOL DISTRICT NO. 1J,
MULTNOMAH COUNTY, OREGON**

CITY OF PORTLAND

By: _____
Title: Deputy Clerk

By: _____
Title: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

General Counsel

City Attorney

**NATIVE AMERICAN YOUTH AND
FAMILY CENTER**

By: _____
Title: _____

APPROVED AS TO FORM

Legal Counsel

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, by
_____, as the _____ of the City of Portland, an Oregon
municipal corporation, as a duly authorized representative of the City.

Notary Public for the State of Oregon
My commission expires:

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, by
_____, as the _____ of **SCHOOL DISTRICT
NO. 1J, MULTNOMAH COUNTY, OREGON**, an Oregon school district, as a duly
authorized representative of the district.

Notary Public for the State of Oregon
My commission expires:

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, by
_____, as the _____ of **NATIVE AMERICAN
YOUTH AND FAMILY CENTER**, an Oregon nonprofit corporation, as a duly authorized
representative of the corporation.

Notary Public for the State of Oregon
My commission expires:

EXHIBIT A

Legal Description

The East 441.43 feet of the following-described property in the Southwest Quarter of the Northwest Quarter of Section 16, Township 1 South, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah, State of Oregon:

The South one half of the North one half and the North one half of the South one half of the following-described property: Beginning 265 rods South of the northwest corner of the D.L.C. of Thomas W. Gates and wife at a point on the west line thereof; running thence South 43 rods; thence East 74 rods; thence North 43 rods; thence West 74 rods to the place of beginning.

EXHIBIT B

CONTINGENCIES; CONSTRUCTION AND DEVELOPMENT

1. **Contingencies.** This Lease is subject to: (i) NAYA's receipt and approval of an environmental assessment to confirm that the Housing Tract does not contain any hazardous substances; (ii) NAYA's inspection of the Housing Tract and its "due diligence" review of the condition of the Housing Tract (physical condition, compliance with Legal Requirements, land use and other matters); (iii) NAYA's receipt and approval of a survey and a leasehold title insurance policy on the Housing Tract, as described below; (iv) determination that NAYA has adequate financing and support to pay for or finance the cost of development of the Housing Tract with the Improvements; (v) NAYA and PPS entering into a Pre-Development Agreement on terms acceptable to both parties, providing for (a) the redevelopment of the Foster School Site, including the construction of public roads, (b) the School to be rebuilt pursuant to plans and specifications reasonably acceptable to PPS so that it may be used as an Early Learning Academy, including a finance plan acceptable to PPS prior to demolition of the existing School Building and (c) a commitment by both parties to jointly participation in the construction of the Early Learning Academy and adjacent Longhouse community center; (vi) NAYA and PPS entering into a lease for use of the Early Learning Academy/Longhouse on terms acceptable to both parties, and (vii) NAYA and PPS entering into an Joint Operating Agreement on terms acceptable to both parties.

2. **Due Diligence and Title Review.**

2.1. As of the Effective Date, upon giving PPS at least five business days' prior notice, NAYA shall have the right to enter the Housing Tract to examine the property as part of its "due diligence" examinations, including without limitation non-invasive environmental reviews, survey preparation, the physical review of any existing improvements, and construction site reviews.

2.2 Promptly after the Effective Date, the Parties will co-operate in causing the following to be obtained and delivered to all Parties (unless NAYA waives the requirement in writing): (i) a current "Level One" environmental assessment to confirm that the Housing Tract does not contain any Hazardous Substances, which will be certified to PPS and NAYA; (ii) a land survey of the Housing Tract to be provided by a licensed surveyor or civil engineer, in form reasonably acceptable to, and to be certified to, PPS and NAYA, and in sufficient detail to provide the basis for an ALTA policy of title insurance without boundary, encroachment, or survey exceptions; (iii) a current preliminary title insurance commitment/report acceptable to NAYA from Lawyer's Title, subject to change as NAYA deems reasonably appropriate ("**Title Company**"), showing that PPS is the fee owner of good and merchantable title without exceptions that would materially interfere with NAYA's ability to use the Housing Tract for its intended purpose; and (iv) any soil tests, geotechnical studies, environmental tests or audits and other reports or studies on the physical condition of the Housing Tract as may be in PPS's possession (but without warranty by PPS as to the accuracy or reliability of the same).

2.3. NAYA will be responsible for the cost of the "Level One" assessment, and the cost of the land survey and any lot line, land partition, tax lot change, or similar actions

needed for this transaction. The cost of a "standard coverage" leasehold title insurance policy in the amount of the fair market value of the Housing Tract will be paid by NAYA upon issuance of a leasehold title insurance policy to NAYA (which will not be required unless and until NAYA waives all contingencies to its obligations under this Lease other than the issuance of such title policy). If NAYA requires an "extended coverage" title insurance policy, then the incremental premium difference (of extended vs. standard coverage) will be paid by NAYA. PPS and the City will sign the Title Company's standard form of ALTA affidavit, if required, and otherwise cooperate in NAYA obtaining the "due diligence" materials described above. Notwithstanding anything to the contrary contained in this provision, PPS shall not be obligated to pay any of the costs under subsection 2.2 or this subsection 2.3.

2.4. NAYA will promptly review the "due diligence" materials turned over by PPS or obtained by NAYA to determine the environmental and other physical conditions of the Housing Tract, and may terminate NAYA's right to this Lease by written notice to PPS if NAYA is not reasonably satisfied with the results thereof. In such event, all obligations of the parties under this Lease shall thereafter cease.

3. **Right to Terminate NAYA Rights.** Notwithstanding the nature of the delaying cause (including Force Majeure delays), in the event that (i) all the contingencies stated in Section 1 of Exhibit B above are not waived or satisfied not later than twelve (12) months after the Effective Date (the "**Contingency Date**"), then either PPS or NAYA may elect to terminate NAYA's rights to this Lease and the Housing Tract upon written notice to the other party, with copy also provided to the City, in which event PPS and NAYA will have no further obligation to the other pursuant to this Lease; provided, that if NAYA is still diligently pursuing financing, building permits, and/or land use approvals and reasonably believes that it will be able to obtain them within an additional three (3) year period after such Contingency Date, then the Contingency Date will be extended on NAYA's request for such additional three (3) year period. If at any time prior to the Contingency Date NAYA determines that the such funds and financing and building permits or approvals cannot be obtained and/or contingencies cannot be removed, NAYA shall give PPS not less than fifteen (15) days' notice of termination of this Lease, specifying the matters that cannot be satisfied. If termination of NAYA's rights occurs, PPS and the City will proceed under Section 33 of the Lease.

4. **Work Product to PPS.** If for any reason NAYA's right in this Lease is terminated, NAYA shall deliver to PPS, upon its request, the written work product pertaining to the Housing Tract and NAYA's Work, including all Plans, drawings, supporting data, studies, and any surveys (the "**Project Work Product**"); provided, the Project Work Product will exclude (i) any information that NAYA considers to be confidential or proprietary in nature or that would not reasonably be useful to any subsequent development or use of the Housing Tract by PPS or third parties; and (ii) any information or material on funds or financing that NAYA was pursuing or obtained.